
HOWARD UNIVERSITY SCHOOL OF LAW
CONSTITUTIONAL LAW II SECTION I

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Fall 2009 Final Exam Instructions

December 8, 2009

General Instructions

You have three (3) hours for the exam.

Times noted for the questions reflect the amount of time I estimate it would take to answer each question. Please note that although the time noted for each question does relate somewhat to the points for that question, it does not do so in a strict one-to-one fashion.

The exam is three (3) pages long, excluding this instruction page.

There are four (4) questions worth 30 points, 40 points, 60 points, and 30 points respectively for a total of 160 points.

Write legibly and clearly in blue or black ink.

Use headings as appropriate.

Respond to the question asked, not to questions that might have been asked. Even though a particular fact pattern may be based on one of the hypothetical problems given during the semester, either or both the factual particulars or the call of the question may be different. Within your responses, do not spend time on matters that are not issues just to show me how much you know. This exam tests professional judgment as well as knowledge of constitutional law.

Permissible exam materials

The exam is closed book.

No materials other than the exam itself, blank scratch paper, and bluebooks are allowed.

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Question 1. 30 points. Estimated time: 30 minutes.

In October 2008 the City Council of the City of Chicapolis in the State of Indinois adopted a gun control law that provides:

1. Possession of unlicensed handguns within the city is banned as of January 1, 2009.
2. Handguns lawfully registered and kept in homes must be kept unloaded with a trigger lock or disassembled or otherwise rendered inoperative.

On March 2, 2009, Bradley Bararms was arrested in Chicapolis for illegal possession of a firearm. He had an unregistered handgun in his home, loaded, and ready to use. It was discovered by firefighters responding to a small fire in his kitchen.

Bararms said that he kept the gun to protect himself.

The gun was confiscated (a civil penalty imposed by the law) and Bararms was charged with misdemeanor possession. The city concedes that if the Second Amendment right to keep and bear arms, as interpreted in *Heller*, applies, the ordinance is unconstitutional and Bararms' arrest and the confiscation of his gun are unconstitutional.

Advise the city.

Question 2. 50 points. Estimated time: 50 minutes.

Yakko Warner, Wakko Warner, and their little sister Dot (aka Warner Bros.) formed their own religion and called it Animaniism. The Animaniists consider the TV sacred. The Animaniists sacred rituals include making animated representations of the world and of fantasy worlds. But there is a catch. Before they are allowed to show something in animation, they must do it in real life, or do the things as close as real physics will allow and without actually injuring anyone or anything. This has resulted in various acts of non-destructive vandalism, assault, technical batteries, and other forms of mostly low-end law breaking. These are the sorts of things one sees in cartoons all the time, of course.

After a couple of years, a group within the Animaniism religion split off and formed another religion, Pinkyism. One central tenet of Pinkyism is that the gods have chosen certain people to be the true leaders of the world and these are the Pinkists. Pinkists thus maintain as a matter of religious belief that its members are better than everyone else and are not only entitled to take over the world, but are obligated to do so. In order to confirm that an acolyte belongs to the elite, Pinky, the Pinkists' leader, requires each would-be member of his sect to spend a day with wolves at the Lollywood Wild Animal Center.

The Lollywood Wild Animal Center provides handlers and wild animals including bears, tigers, wolves, and more, for Lollywood films. The wolves (as are the other animals) at the center are socialized to accept human handlers in their midst.

The acolytes must do all the things the handlers do which involves direct contact with the wolves. And, most importantly, the acolytes must in some manner show themselves in some sense to be "leaders of the pack."

One week after a feature article in the local Lollywood newspaper discussed Pinkyism and the testing its members underwent at the Lollywood Wild Animal Center, the City of Lollywood passed a law which provides in part: "the use of dangerous animals at public events or for public or private rituals is forbidden." The only use of the wild animals in Lollywood is in movies or in Pinkist leadership test described above. The center is not open to the public.

Pinky was arrested for sending acolytes to the Lollywood Wolf Wild Animal Center in violation of the ordinance against using dangerous animals in private ceremonies.

Pinky claims the ordinance is unconstitutional. Consider whether he is correct. Be sure to explain your reasoning thoroughly.

Question 3. 60 points. Estimated time: 60 minutes.

Independent School District 42 (ISD 42), which ran the public schools in a suburban setting, determined that a number of students were performing well below expectations. Upon further investigation, the school determined that the students performing low were recent Maiwin immigrants from the war torn country of Seaisa. The investigation further showed that the low performance was related to language difficulties (English was the second language for almost all Maiwin) and cultural differences which manifested themselves in a variety of ways, including in particular not valuing formal education.

As a result of the study, the school district instituted several programs. First, it started an ESL program (English as a Second Language) that any student who spoke English as his or her second language could participate in. Second, it created two Maiwin-specific programs targeted at helping the Maiwin students succeed. One of the Maiwin programs reached out to the Maiwin community outside of school to help them understand the importance of formal schooling. The other Maiwin-specific program provided Maiwin language instruction in substantive subjects as well as in English.

The parents of a low-performing white (non-Maiwin) student, Flora Billings, sued ISD 42 claiming these programs violate the Constitution. ISD 42 has defended its actions publicly, claiming that it is just trying to ensure that all children receive an effective education and that these methods have been proven to work in other communities.

Consider the substantive constitutional claims of the Billings. Do not consider standing issues or other procedural issues.

Question 4. 30 points. Estimated time: 30 minutes.

Consider the extent to which United States free speech/free press jurisprudence, by using common law torts to limit free speech in the areas of defamation and intentional infliction of emotional distress, complies with the requirements of Article 19 of the International Covenant on Civil and Political Rights (ICCPR) (reproduced below). Do not consider Article 20.

ICCPR Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

End of Exam